

REFERENCE TITLE: immigration; law enforcement; safe neighborhoods

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SB 1070

Introduced by

Senators Pearce R, Gray C, Gray L; Representatives Antenori, Barnes,
Gowan, Hendrix, Kavanagh, Seel; Senators Allen S, Burns, Gorman, Harper,
Huppenthal, Leff, Melvin, Nelson, Pierce S, Tibshraeny, Verschoor, Waring;
Representatives Ash, Biggs, Burges, Court, Crump, Lesko, Mason, McLain,
Montenegro, Murphy, Nichols, Reagan, Stevens, Weiers J, Weiers JP,
Yarbrough

AN ACT

AMENDING TITLE 11, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8;
AMENDING TITLE 13, CHAPTER 15, ARIZONA REVISED STATUTES, BY ADDING SECTION
13-1509; AMENDING TITLE 13, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING
SECTIONS 13-2928 AND 13-2929; AMENDING SECTIONS 23-212, 23-212.01, 23-214 AND
28-3511, ARIZONA REVISED STATUTES; RELATING TO UNLAWFULLY PRESENT ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Intent

The legislature finds that there is a compelling interest in the cooperative enforcement of federal immigration laws throughout all of Arizona. The legislature declares that the intent of this act is make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.

Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by adding article 8, to read:

ARTICLE 8. ENFORCEMENT OF IMMIGRATION LAWS

11-1051. Cooperation and assistance in enforcement of immigration laws; indemnification

A. NO OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY ADOPT A POLICY THAT LIMITS OR RESTRICTS THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL EXTENT PERMITTED BY FEDERAL LAW.

B. FOR ANY LEGITIMATE CONTACT MADE BY AN OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE WHERE REASONABLE SUSPICION EXISTS THAT THE PERSON IS AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES, A REASONABLE ATTEMPT SHALL BE MADE TO DETERMINE THE IMMIGRATION STATUS OF THE PERSON. THE PERSON'S IMMIGRATION STATUS SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

C. IF AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IS CONVICTED OF A VIOLATION OF STATE OR LOCAL LAW, ON DISCHARGE FROM IMPRISONMENT OR ASSESSMENT OF ANY FINE THAT IS IMPOSED, THE ALIEN SHALL BE TRANSFERRED IMMEDIATELY TO THE CUSTODY OF THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION.

D. NOTWITHSTANDING ANY OTHER LAW, A LAW ENFORCEMENT AGENCY MAY SECURELY TRANSPORT AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES AND WHO IS IN THE AGENCY'S CUSTODY TO A FEDERAL FACILITY IN THIS STATE OR TO ANY OTHER POINT OF TRANSFER INTO FEDERAL CUSTODY THAT IS OUTSIDE THE JURISDICTION OF THE LAW ENFORCEMENT AGENCY.

E. A LAW ENFORCEMENT OFFICER, WITHOUT A WARRANT, MAY ARREST A PERSON IF THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE PERSON HAS COMMITTED ANY PUBLIC OFFENSE THAT MAKES THE PERSON REMOVABLE FROM THE UNITED STATES.

F. EXCEPT AS PROVIDED IN FEDERAL LAW, OFFICIALS OR AGENCIES OF THIS STATE AND COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF THIS STATE MAY NOT BE PROHIBITED OR IN ANY WAY BE RESTRICTED FROM SENDING, RECEIVING OR MAINTAINING INFORMATION RELATING TO THE IMMIGRATION STATUS OF ANY INDIVIDUAL OR EXCHANGING THAT INFORMATION WITH ANY OTHER FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING OFFICIAL PURPOSES:

1 1. DETERMINING ELIGIBILITY FOR ANY PUBLIC BENEFIT, SERVICE OR LICENSE
2 PROVIDED BY ANY FEDERAL, STATE, LOCAL OR OTHER POLITICAL SUBDIVISION OF THIS
3 STATE.

4 2. VERIFYING ANY CLAIM OF RESIDENCE OR DOMICILE IF DETERMINATION OF
5 RESIDENCE OR DOMICILE IS REQUIRED UNDER THE LAWS OF THIS STATE OR A JUDICIAL
6 ORDER ISSUED PURSUANT TO A CIVIL OR CRIMINAL PROCEEDING IN THIS STATE.

7 3. CONFIRMING THE IDENTITY OF ANY PERSON WHO IS DETAINED.

8 4. IF THE PERSON IS AN ALIEN, DETERMINING WHETHER THE PERSON IS IN
9 COMPLIANCE WITH THE FEDERAL REGISTRATION LAWS PRESCRIBED BY TITLE II, CHAPTER
10 7 OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT.

11 G. A PERSON MAY BRING AN ACTION IN SUPERIOR COURT TO CHALLENGE ANY
12 OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL
13 SUBDIVISION OF THIS STATE THAT ADOPTS OR IMPLEMENTS A POLICY THAT LIMITS OR
14 RESTRICTS THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL
15 EXTENT PERMITTED BY FEDERAL LAW. IF THERE IS A JUDICIAL FINDING THAT AN
16 ENTITY HAS VIOLATED THIS SECTION, THE COURT SHALL ORDER ANY OF THE FOLLOWING:

17 1. THAT THE PERSON WHO BROUGHT THE ACTION RECOVER COURT COSTS AND
18 ATTORNEY FEES.

19 2. THAT THE ENTITY PAY A CIVIL PENALTY OF NOT LESS THAN ONE THOUSAND
20 DOLLARS AND NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH DAY THAT THE POLICY
21 HAS REMAINED IN EFFECT AFTER THE FILING OF AN ACTION PURSUANT TO THIS
22 SUBSECTION.

23 H. A COURT SHALL COLLECT THE CIVIL PENALTY PRESCRIBED IN SUBSECTION G
24 AND REMIT THE CIVIL PENALTY TO THE DEPARTMENT OF PUBLIC SAFETY, WHICH SHALL
25 ESTABLISH A SPECIAL SUBACCOUNT FOR THE MONIES IN THE ACCOUNT ESTABLISHED FOR
26 THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION APPROPRIATION.
27 MONIES IN THE SPECIAL SUBACCOUNT ARE SUBJECT TO LEGISLATIVE APPROPRIATION FOR
28 DISTRIBUTION FOR GANG AND IMMIGRATION ENFORCEMENT AND FOR COUNTY JAIL
29 REIMBURSEMENT COSTS RELATING TO ILLEGAL IMMIGRATION.

30 I. A LAW ENFORCEMENT OFFICER IS INDEMNIFIED BY THE LAW ENFORCEMENT
31 OFFICER'S AGENCY AGAINST REASONABLE COSTS AND EXPENSES, INCLUDING ATTORNEY
32 FEES, INCURRED BY THE OFFICER IN CONNECTION WITH ANY ACTION, SUIT OR
33 PROCEEDING BROUGHT PURSUANT TO THIS SECTION TO WHICH THE OFFICER MAY BE A
34 PARTY BY REASON OF THE OFFICER BEING OR HAVING BEEN A MEMBER OF THE LAW
35 ENFORCEMENT AGENCY, EXCEPT IN RELATION TO MATTERS IN WHICH THE OFFICER IS
36 ADJUDGED TO HAVE ACTED IN BAD FAITH.

37 Sec. 3. Title 13, chapter 15, Arizona Revised Statutes, is amended by
38 adding section 13-1509, to read:

39 13-1509. Trespassing by illegal aliens; assessment; exception;
40 classification

41 A. IN ADDITION TO ANY VIOLATION OF FEDERAL LAW, A PERSON IS GUILTY OF
42 TRESPASSING IF THE PERSON IS BOTH:

1 1. PRESENT ON ANY PUBLIC OR PRIVATE LAND IN THIS STATE.
2 2. IN VIOLATION OF 8 UNITED STATES CODE SECTION 1304(e) OR 1306(a).
3 B. IN THE ENFORCEMENT OF THIS SECTION, THE FINAL DETERMINATION OF AN
4 ALIEN'S IMMIGRATION STATUS SHALL BE DETERMINED BY EITHER:
5 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED TO VERIFY OR ASCERTAIN
6 AN ALIEN'S IMMIGRATION STATUS.
7 2. A LAW ENFORCEMENT OFFICER OR AGENCY COMMUNICATING WITH THE UNITED
8 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES BORDER
9 PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).
10 C. A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION IS NOT ELIGIBLE
11 FOR SUSPENSION OR COMMUTATION OF SENTENCE OR RELEASE ON ANY BASIS UNTIL THE
12 SENTENCE IMPOSED IS SERVED.
13 D. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE COURT SHALL
14 ORDER THE PERSON TO PAY JAIL COSTS AND AN ADDITIONAL ASSESSMENT IN THE
15 FOLLOWING AMOUNTS:
16 1. AT LEAST FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION.
17 2. TWICE THE AMOUNT SPECIFIED IN PARAGRAPH 1 OF THIS SUBSECTION IF THE
18 PERSON WAS PREVIOUSLY SUBJECT TO AN ASSESSMENT PURSUANT TO THIS SUBSECTION.
19 E. A COURT SHALL COLLECT THE ASSESSMENTS PRESCRIBED IN SUBSECTION D OF
20 THIS SECTION AND REMIT THE ASSESSMENTS TO THE DEPARTMENT OF PUBLIC SAFETY,
21 WHICH SHALL ESTABLISH A SPECIAL SUBACCOUNT FOR THE MONIES IN THE ACCOUNT
22 ESTABLISHED FOR THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT
23 MISSION APPROPRIATION. MONIES IN THE SPECIAL SUBACCOUNT ARE SUBJECT TO
24 LEGISLATIVE APPROPRIATION FOR DISTRIBUTION FOR GANG AND IMMIGRATION
25 ENFORCEMENT AND FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING TO ILLEGAL
26 IMMIGRATION.
27 F. THIS SECTION DOES NOT APPLY TO A PERSON WHO MAINTAINS AUTHORIZATION
28 FROM THE FEDERAL GOVERNMENT TO REMAIN IN THE UNITED STATES.
29 G. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT THAT A
30 VIOLATION OF THIS SECTION IS:
31 1. A CLASS 2 FELONY IF THE PERSON VIOLATES THIS SECTION WHILE IN
32 POSSESSION OF ANY OF THE FOLLOWING:
33 (a) A DANGEROUS DRUG AS DEFINED IN SECTION 13-3401.
34 (b) PRECURSOR CHEMICALS THAT ARE USED IN THE MANUFACTURING OF
35 METHAMPHETAMINE IN VIOLATION OF SECTION 13-3404.01.
36 (c) A DEADLY WEAPON OR A DANGEROUS INSTRUMENT, AS DEFINED IN SECTION
37 13-105.
38 (d) PROPERTY THAT IS USED FOR THE PURPOSE OF COMMITTING AN ACT OF
39 TERRORISM AS PRESCRIBED IN SECTION 13-2308.01.
40 2. A CLASS 4 FELONY IF THE PERSON EITHER:
41 (a) IS CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF THIS SECTION.
42 (b) WITHIN SIXTY MONTHS BEFORE THE VIOLATION, HAS BEEN REMOVED FROM
43 THE UNITED STATES PURSUANT TO 8 UNITED STATES CODE SECTION 1229a OR HAS
44 ACCEPTED A VOLUNTARY REMOVAL FROM THE UNITED STATES PURSUANT TO 8 UNITED
45 STATES CODE SECTION 1229c.

1 Sec. 4. Title 13, chapter 29, Arizona Revised Statutes, is amended by
2 adding sections 13-2928 and 13-2929, to read:

3 13-2928. Unlawful stopping to hire and pick up passengers for
4 work; unlawful application, solicitation or
5 employment; classification; definitions

6 A. IT IS UNLAWFUL FOR AN OCCUPANT OF A MOTOR VEHICLE THAT IS STOPPED
7 ON A STREET, ROADWAY OR HIGHWAY TO ATTEMPT TO HIRE OR HIRE AND PICK UP
8 PASSENGERS FOR WORK AT A DIFFERENT LOCATION IF THE MOTOR VEHICLE BLOCKS OR
9 IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

10 B. IT IS UNLAWFUL FOR A PERSON TO ENTER A MOTOR VEHICLE THAT IS
11 STOPPED ON A STREET, ROADWAY OR HIGHWAY IN ORDER TO BE HIRED BY AN OCCUPANT
12 OF THE MOTOR VEHICLE AND TO BE TRANSPORTED TO WORK AT A DIFFERENT LOCATION IF
13 THE MOTOR VEHICLE BLOCKS OR IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

14 C. IT IS UNLAWFUL FOR A PERSON WHO IS UNLAWFULLY PRESENT IN THE UNITED
15 STATES AND WHO IS AN UNAUTHORIZED ALIEN TO KNOWINGLY APPLY FOR WORK, SOLICIT
16 WORK IN A PUBLIC PLACE OR PERFORM WORK AS AN EMPLOYEE OR INDEPENDENT
17 CONTRACTOR IN THIS STATE.

18 D. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

19 E. FOR THE PURPOSES OF THIS SECTION:

20 1. "SOLICIT" MEANS VERBAL OR NONVERBAL COMMUNICATION BY A GESTURE OR A
21 NOD THAT WOULD INDICATE TO A REASONABLE PERSON THAT A PERSON IS WILLING TO BE
22 EMPLOYED.

23 2. "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE THE LEGAL
24 RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS
25 DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a(h)(3).

26 13-2929. Unlawful transporting, moving, concealing, harboring
27 or shielding of unlawful aliens; vehicle
28 impoundment; classification

29 A. IT IS UNLAWFUL FOR A PERSON TO:

30 1. TRANSPORT OR MOVE OR ATTEMPT TO TRANSPORT OR MOVE AN ALIEN IN THIS
31 STATE IN A MEANS OF TRANSPORTATION IF THE PERSON KNOWS OR RECKLESSLY
32 DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE
33 UNITED STATES IN VIOLATION OF LAW.

34 2. CONCEAL, HARBOR OR SHIELD OR ATTEMPT TO CONCEAL, HARBOR OR SHIELD
35 AN ALIEN FROM DETECTION IN ANY PLACE IN THIS STATE, INCLUDING ANY BUILDING OR
36 ANY MEANS OF TRANSPORTATION, IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE
37 FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES
38 IN VIOLATION OF LAW.

39 3. ENCOURAGE OR INDUCE AN ALIEN TO COME TO OR RESIDE IN THIS STATE IF
40 THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT SUCH COMING TO,
41 ENTERING OR RESIDING IN THIS STATE IS OR WILL BE IN VIOLATION OF LAW.

42 B. A MEANS OF TRANSPORTATION THAT IS USED IN THE COMMISSION OF A
43 VIOLATION OF THIS SECTION IS SUBJECT TO MANDATORY VEHICLE IMMOBILIZATION OR
44 IMPOUNDMENT PURSUANT TO SECTION 28-3511.

1 C. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1
2 MISDEMEANOR AND IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND DOLLARS, EXCEPT
3 THAT A VIOLATION OF THIS SECTION THAT INVOLVES TEN OR MORE ILLEGAL ALIENS IS
4 A CLASS 6 FELONY AND THE PERSON IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND
5 DOLLARS FOR EACH ALIEN WHO IS INVOLVED.

6 Sec. 5. Section 23-212, Arizona Revised Statutes, is amended to read:

7 23-212. Knowingly employing unauthorized aliens; prohibition;
8 false and frivolous complaints; violation;
9 classification; license suspension and revocation;
10 affirmative defense

11 A. An employer shall not knowingly employ an unauthorized alien. If,
12 in the case when an employer uses a contract, subcontract or other
13 independent contractor agreement to obtain the labor of an alien in this
14 state, the employer knowingly contracts with an unauthorized alien or with a
15 person who employs or contracts with an unauthorized alien to perform the
16 labor, the employer violates this subsection.

17 B. The attorney general shall prescribe a complaint form for a person
18 to allege a violation of subsection A of this section. The complainant shall
19 not be required to list the complainant's social security number on the
20 complaint form or to have the complaint form notarized. On receipt of a
21 complaint on a prescribed complaint form that an employer allegedly knowingly
22 employs an unauthorized alien, the attorney general or county attorney shall
23 investigate whether the employer has violated subsection A of this section.
24 If a complaint is received but is not submitted on a prescribed complaint
25 form, the attorney general or county attorney may investigate whether the
26 employer has violated subsection A of this section. This subsection shall
27 not be construed to prohibit the filing of anonymous complaints that are not
28 submitted on a prescribed complaint form. The attorney general or county
29 attorney shall not investigate complaints that are based solely on race,
30 color or national origin. A complaint that is submitted to a county attorney
31 shall be submitted to the county attorney in the county in which the alleged
32 unauthorized alien is or was employed by the employer. The county sheriff or
33 any other local law enforcement agency may assist in investigating a
34 complaint. THE COUNTY ATTORNEY MAY TAKE EVIDENCE, ADMINISTER OATHS OR
35 AFFIRMATIONS, ISSUE SUBPOENAS REQUIRING ATTENDANCE AND TESTIMONY OF WITNESSES
36 AND CAUSE DEPOSITIONS TO BE TAKEN. When investigating a complaint, the
37 attorney general or county attorney shall verify the work authorization of
38 the alleged unauthorized alien with the federal government pursuant to 8
39 United States Code section 1373(c). A state, county or local official shall
40 not attempt to independently make a final determination on whether an alien
41 is authorized to work in the United States. An alien's immigration status or
42 work authorization status shall be verified with the federal government
43 pursuant to 8 United States Code section 1373(c). A person who knowingly
44 files a false and frivolous complaint under this subsection is guilty of a
45 class 3 misdemeanor.

C. PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION ARE EXEMPT FROM TITLE 38, CHAPTER 3, ARTICLE 3.1.

~~C.~~ D. If, after an investigation, the attorney general or county attorney determines that the complaint is not false and frivolous:

1. The attorney general or county attorney shall notify the United States immigration and customs enforcement of the unauthorized alien.

2. The attorney general or county attorney shall notify the local law enforcement agency of the unauthorized alien.

3. The attorney general shall notify the appropriate county attorney to bring an action pursuant to subsection ~~D~~ E of this section if the complaint was originally filed with the attorney general.

~~D.~~ E. An action for a violation of subsection A of this section shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is or was employed by the employer. The county attorney shall not bring an action against any employer for any violation of subsection A of this section that occurs before January 1, 2008. A second violation of this section shall be based only on an unauthorized alien who is or was employed by the employer after an action has been brought for a violation of subsection A of this section or section 23-212.01, subsection A.

~~E.~~ F. For any action in superior court under this section, the court shall expedite the action, including assigning the hearing at the earliest practicable date.

~~F.~~ G. On a finding of a violation of subsection A of this section:

1. For a first violation, as described in paragraph 3 of this subsection, the court:

(a) Shall order the employer to terminate the employment of all unauthorized aliens.

(b) Shall order the employer to be subject to a three year probationary period for the business location where the unauthorized alien performed work. During the probationary period the employer shall file quarterly reports in the form provided in section 23-722.01 with the county attorney of each new employee who is hired by the employer at the business location where the unauthorized alien performed work.

(c) Shall order the employer to file a signed sworn affidavit with the county attorney within three business days after the order is issued. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens in this state and that the employer will not intentionally or knowingly employ an unauthorized alien in this state. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county attorney within three business days after the order is issued. All licenses that are suspended under this subdivision shall remain suspended until the employer files a signed sworn affidavit with the county attorney. Notwithstanding any other law, on filing

1 of the affidavit the suspended licenses shall be reinstated immediately by
2 the appropriate agencies. For the purposes of this subdivision, the licenses
3 that are subject to suspension under this subdivision are all licenses that
4 are held by the employer specific to the business location where the
5 unauthorized alien performed work. If the employer does not hold a license
6 specific to the business location where the unauthorized alien performed
7 work, but a license is necessary to operate the employer's business in
8 general, the licenses that are subject to suspension under this subdivision
9 are all licenses that are held by the employer at the employer's primary
10 place of business. On receipt of the court's order and notwithstanding any
11 other law, the appropriate agencies shall suspend the licenses according to
12 the court's order. The court shall send a copy of the court's order to the
13 attorney general and the attorney general shall maintain the copy pursuant to
14 subsection ~~G~~ H of this section.

15 (d) May order the appropriate agencies to suspend all licenses
16 described in subdivision (c) of this paragraph that are held by the employer
17 for not to exceed ten business days. The court shall base its decision to
18 suspend under this subdivision on any evidence or information submitted to it
19 during the action for a violation of this subsection and shall consider the
20 following factors, if relevant:

- 21 (i) The number of unauthorized aliens employed by the employer.
- 22 (ii) Any prior misconduct by the employer.
- 23 (iii) The degree of harm resulting from the violation.
- 24 (iv) Whether the employer made good faith efforts to comply with any
25 applicable requirements.
- 26 (v) The duration of the violation.
- 27 (vi) The role of the directors, officers or principals of the employer
28 in the violation.
- 29 (vii) Any other factors the court deems appropriate.

30 2. For a second violation, as described in paragraph 3 of this
31 subsection, the court shall order the appropriate agencies to permanently
32 revoke all licenses that are held by the employer specific to the business
33 location where the unauthorized alien performed work. If the employer does
34 not hold a license specific to the business location where the unauthorized
35 alien performed work, but a license is necessary to operate the employer's
36 business in general, the court shall order the appropriate agencies to
37 permanently revoke all licenses that are held by the employer at the
38 employer's primary place of business. On receipt of the order and
39 notwithstanding any other law, the appropriate agencies shall immediately
40 revoke the licenses.

41 3. The violation shall be considered:

- 42 (a) A first violation by an employer at a business location if the
43 violation did not occur during a probationary period ordered by the court
44 under this subsection or section 23-212.01, subsection ~~F~~ G for that
45 employer's business location.

(b) A second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under this subsection or section 23-212.01, subsection ~~F~~ G for that employer's business location.

~~G~~ H. The attorney general shall maintain copies of court orders that are received pursuant to subsection ~~F~~ G of this section and shall maintain a database of the employers and business locations that have a first violation of subsection A of this section and make the court orders available on the attorney general's website.

~~H~~ I. On determining whether an employee is an unauthorized alien, the court shall consider only the federal government's determination pursuant to 8 United States Code section 1373(c). The federal government's determination creates a rebuttable presumption of the employee's lawful status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 United States Code section 1373(c).

~~I~~ J. For the purposes of this section, proof of verifying the employment authorization of an employee through the e-verify program creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien.

~~J~~ K. For the purposes of this section, an employer that establishes that it has complied in good faith with the requirements of 8 United States Code section 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien. An employer is considered to have complied with the requirements of 8 United States Code section 1324a(b), notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

L. AN EMPLOYER IS NOT ENTRAPPED UNDER THIS SECTION IF THE EMPLOYER WAS PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO VIOLATE SUBSECTION A OF THIS SECTION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITIES.

Sec. 6. Section 23-212.01, Arizona Revised Statutes, is amended to read:

23-212.01. Intentionally employing unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

A. An employer shall not intentionally employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer intentionally contracts with an unauthorized alien or

1 with a person who employs or contracts with an unauthorized alien to perform
2 the labor, the employer violates this subsection.

3 B. The attorney general shall prescribe a complaint form for a person
4 to allege a violation of subsection A of this section. The complainant shall
5 not be required to list the complainant's social security number on the
6 complaint form or to have the complaint form notarized. On receipt of a
7 complaint on a prescribed complaint form that an employer allegedly
8 intentionally employs an unauthorized alien, the attorney general or county
9 attorney shall investigate whether the employer has violated subsection A of
10 this section. If a complaint is received but is not submitted on a
11 prescribed complaint form, the attorney general or county attorney may
12 investigate whether the employer has violated subsection A of this section.
13 This subsection shall not be construed to prohibit the filing of anonymous
14 complaints that are not submitted on a prescribed complaint form. The
15 attorney general or county attorney shall not investigate complaints that are
16 based solely on race, color or national origin. A complaint that is
17 submitted to a county attorney shall be submitted to the county attorney in
18 the county in which the alleged unauthorized alien is or was employed by the
19 employer. The county sheriff or any other local law enforcement agency may
20 assist in investigating a complaint. **THE COUNTY ATTORNEY MAY TAKE EVIDENCE,**
21 **ADMINISTER OATHS OR AFFIRMATIONS, ISSUE SUBPOENAS REQUIRING ATTENDANCE AND**
22 **TESTIMONY OF WITNESSES AND CAUSE DEPOSITIONS TO BE TAKEN.** When investigating
23 a complaint, the attorney general or county attorney shall verify the work
24 authorization of the alleged unauthorized alien with the federal government
25 pursuant to 8 United States Code section 1373(c). A state, county or local
26 official shall not attempt to independently make a final determination on
27 whether an alien is authorized to work in the United States. An alien's
28 immigration status or work authorization status shall be verified with the
29 federal government pursuant to 8 United States Code section 1373(c). A
30 person who knowingly files a false and frivolous complaint under this
31 subsection is guilty of a class 3 misdemeanor.

32 C. **PROCEEDINGS HELD DURING THE COURSE OF A CONFIDENTIAL INVESTIGATION**
33 **ARE EXEMPT FROM TITLE 38, CHAPTER 3, ARTICLE 3.1.**

34 ~~C.~~ D. If, after an investigation, the attorney general or county
35 attorney determines that the complaint is not false and frivolous:

36 1. The attorney general or county attorney shall notify the United
37 States immigration and customs enforcement of the unauthorized alien.

38 2. The attorney general or county attorney shall notify the local law
39 enforcement agency of the unauthorized alien.

40 3. The attorney general shall notify the appropriate county attorney
41 to bring an action pursuant to subsection ~~D~~ E of this section if the
42 complaint was originally filed with the attorney general.

43 ~~D.~~ E. An action for a violation of subsection A of this section shall
44 be brought against the employer by the county attorney in the county where
45 the unauthorized alien employee is or was employed by the employer. The

1 county attorney shall not bring an action against any employer for any
2 violation of subsection A of this section that occurs before January 1, 2008.
3 A second violation of this section shall be based only on an unauthorized
4 alien who is or was employed by the employer after an action has been brought
5 for a violation of subsection A of this section or section 23-212,
6 subsection A.

7 ~~E.~~ F. For any action in superior court under this section, the court
8 shall expedite the action, including assigning the hearing at the earliest
9 practicable date.

10 ~~F.~~ G. On a finding of a violation of subsection A of this section:
11 1. For a first violation, as described in paragraph 3 of this
12 subsection, the court shall:

13 (a) Order the employer to terminate the employment of all unauthorized
14 aliens.

15 (b) Order the employer to be subject to a five year probationary
16 period for the business location where the unauthorized alien performed work.
17 During the probationary period the employer shall file quarterly reports in
18 the form provided in section 23-722.01 with the county attorney of each new
19 employee who is hired by the employer at the business location where the
20 unauthorized alien performed work.

21 (c) Order the appropriate agencies to suspend all licenses described
22 in subdivision (d) of this paragraph that are held by the employer for a
23 minimum of ten days. The court shall base its decision on the length of the
24 suspension under this subdivision on any evidence or information submitted to
25 it during the action for a violation of this subsection and shall consider
26 the following factors, if relevant:

27 (i) The number of unauthorized aliens employed by the employer.

28 (ii) Any prior misconduct by the employer.

29 (iii) The degree of harm resulting from the violation.

30 (iv) Whether the employer made good faith efforts to comply with any
31 applicable requirements.

32 (v) The duration of the violation.

33 (vi) The role of the directors, officers or principals of the employer
34 in the violation.

35 (vii) Any other factors the court deems appropriate.

36 (d) Order the employer to file a signed sworn affidavit with the
37 county attorney. The affidavit shall state that the employer has terminated
38 the employment of all unauthorized aliens in this state and that the employer
39 will not intentionally or knowingly employ an unauthorized alien in this
40 state. The court shall order the appropriate agencies to suspend all
41 licenses subject to this subdivision that are held by the employer if the
42 employer fails to file a signed sworn affidavit with the county attorney
43 within three business days after the order is issued. All licenses that are
44 suspended under this subdivision for failing to file a signed sworn affidavit
45 shall remain suspended until the employer files a signed sworn affidavit with

1 the county attorney. For the purposes of this subdivision, the licenses that
2 are subject to suspension under this subdivision are all licenses that are
3 held by the employer specific to the business location where the unauthorized
4 alien performed work. If the employer does not hold a license specific to
5 the business location where the unauthorized alien performed work, but a
6 license is necessary to operate the employer's business in general, the
7 licenses that are subject to suspension under this subdivision are all
8 licenses that are held by the employer at the employer's primary place of
9 business. On receipt of the court's order and notwithstanding any other law,
10 the appropriate agencies shall suspend the licenses according to the court's
11 order. The court shall send a copy of the court's order to the attorney
12 general and the attorney general shall maintain the copy pursuant to
13 subsection ~~G~~ H of this section.

14 2. For a second violation, as described in paragraph 3 of this
15 subsection, the court shall order the appropriate agencies to permanently
16 revoke all licenses that are held by the employer specific to the business
17 location where the unauthorized alien performed work. If the employer does
18 not hold a license specific to the business location where the unauthorized
19 alien performed work, but a license is necessary to operate the employer's
20 business in general, the court shall order the appropriate agencies to
21 permanently revoke all licenses that are held by the employer at the
22 employer's primary place of business. On receipt of the order and
23 notwithstanding any other law, the appropriate agencies shall immediately
24 revoke the licenses.

25 3. The violation shall be considered:

26 (a) A first violation by an employer at a business location if the
27 violation did not occur during a probationary period ordered by the court
28 under this subsection or section 23-212, subsection ~~F~~ G for that employer's
29 business location.

30 (b) A second violation by an employer at a business location if the
31 violation occurred during a probationary period ordered by the court under
32 this subsection or section 23-212, subsection ~~F~~ G for that employer's
33 business location.

34 ~~G~~ H. The attorney general shall maintain copies of court orders that
35 are received pursuant to subsection ~~F~~ G of this section and shall maintain a
36 database of the employers and business locations that have a first violation
37 of subsection A of this section and make the court orders available on the
38 attorney general's website.

39 ~~H~~ I. On determining whether an employee is an unauthorized alien,
40 the court shall consider only the federal government's determination pursuant
41 to 8 United States Code section 1373(c). The federal government's
42 determination creates a rebuttable presumption of the employee's lawful
43 status. The court may take judicial notice of the federal government's
44 determination and may request the federal government to provide automated or
45 testimonial verification pursuant to 8 United States Code section 1373(c).

~~J.~~ J. For the purposes of this section, proof of verifying the employment authorization of an employee through the e-verify program creates a rebuttable presumption that an employer did not intentionally employ an unauthorized alien.

~~K.~~ K. For the purposes of this section, an employer that establishes that it has complied in good faith with the requirements of 8 United States Code section 1324a(b) establishes an affirmative defense that the employer did not intentionally employ an unauthorized alien. An employer is considered to have complied with the requirements of 8 United States Code section 1324a(b), notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

L. AN EMPLOYER IS NOT ENTRAPPED UNDER THIS SECTION IF THE EMPLOYER WAS PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO VIOLATE SUBSECTION A OF THIS SECTION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITIES.

Sec. 7. Section 23-214, Arizona Revised Statutes, is amended to read:

~~23-214.~~ Verification of employment eligibility; e-verify program; economic development incentives; list of registered employers; violation; classification

A. After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program **AND SHALL KEEP A RECORD OF THE VERIFICATION.**

B. In addition to any other requirement for an employer to receive an economic development incentive from a government entity, the employer shall register with and participate in the e-verify program. Before receiving the economic development incentive, the employer shall provide proof to the government entity that the employer is registered with and is participating in the e-verify program. If the government entity determines that the employer is not complying with this subsection, the government entity shall notify the employer by certified mail of the government entity's determination of noncompliance and the employer's right to appeal the determination. On a final determination of noncompliance, the employer shall repay all monies received as an economic development incentive to the government entity within thirty days of the final determination. For the purposes of this subsection:

1. "Economic development incentive" means any grant, loan or performance-based incentive from any government entity that is awarded after September 30, 2008. Economic development incentive does not include any tax provision under title 42 or 43.

2. "Government entity" means this state and any political subdivision of this state that receives and uses tax revenues.

C. Every three months the attorney general shall request from the United States department of homeland security a list of employers from this state that are registered with the e-verify program. On receipt of the list of employers, the attorney general shall make the list available on the attorney general's website.

D. A VIOLATION OF SUBSECTION A IS A CLASS 3 MISDEMEANOR.

Sec. 8. Section 28-3511, Arizona Revised Statutes, is amended to read:
28-3511. Removal and immobilization or impoundment of vehicle

A. A peace officer shall cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that a person is driving the vehicle while any of the following applies:

1. The person's driving privilege is suspended or revoked for any reason.

2. The person has not ever been issued a valid driver license or permit by this state and the person does not produce evidence of ever having a valid driver license or permit issued by another jurisdiction. This paragraph does not apply to the operation of an implement of husbandry.

3. The person is subject to an ignition interlock device requirement pursuant to chapter 4 of this title and the person is operating a vehicle without a functioning certified ignition interlock device. This paragraph does not apply to a person operating an employer's vehicle or the operation of a vehicle due to a substantial emergency as defined in section 28-1464.

4. THE PERSON IS TRANSPORTING, MOVING, CONCEALING, HARBORING OR SHIELDING OR ATTEMPTING TO TRANSPORT, MOVE, CONCEAL, HARBOR OR SHIELD AN ALIEN IN THIS STATE IN A VEHICLE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

B. A peace officer shall cause the removal and impoundment of a vehicle if the peace officer determines that a person is driving the vehicle and if all of the following apply:

1. The person's driving privilege is canceled, suspended or revoked for any reason or the person has not ever been issued a driver license or permit by this state and the person does not produce evidence of ever having a driver license or permit issued by another jurisdiction.

2. The person is not in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

3. The person is driving a vehicle that is involved in an accident that results in either property damage or injury to or death of another person.

C. Except as provided in subsection D of this section, while a peace officer has control of the vehicle the peace officer shall cause the removal and either immobilization or impoundment of the vehicle if the peace officer has probable cause to arrest the driver of the vehicle for a violation of section 4-244, paragraph 34 or section 28-1382 or 28-1383.

1 D. A peace officer shall not cause the removal and either the
2 immobilization or impoundment of a vehicle pursuant to subsection C of this
3 section if all of the following apply:

4 1. The peace officer determines that the vehicle is currently
5 registered and that the driver or the vehicle is in compliance with the
6 financial responsibility requirements of chapter 9, article 4 of this title.

7 2. The spouse of the driver is with the driver at the time of the
8 arrest.

9 3. The peace officer has reasonable grounds to believe that the spouse
10 of the driver:

11 (a) Has a valid driver license.

12 (b) Is not impaired by intoxicating liquor, any drug, a vapor
13 releasing substance containing a toxic substance or any combination of
14 liquor, drugs or vapor releasing substances.

15 (c) Does not have any spirituous liquor in the spouse's body if the
16 spouse is under twenty-one years of age.

17 4. The spouse notifies the peace officer that the spouse will drive
18 the vehicle from the place of arrest to the driver's home or other place of
19 safety.

20 5. The spouse drives the vehicle as prescribed by paragraph 4 of this
21 subsection.

22 E. Except as otherwise provided in this article, a vehicle that is
23 removed and either immobilized or impounded pursuant to subsection A, B or C
24 of this section shall be immobilized or impounded for thirty days. An
25 insurance company does not have a duty to pay any benefits for charges or
26 fees for immobilization or impoundment.

27 F. The owner of a vehicle that is removed and either immobilized or
28 impounded pursuant to subsection A, B or C of this section, the spouse of the
29 owner and each person identified on the department's record with an interest
30 in the vehicle shall be provided with an opportunity for an immobilization or
31 poststorage hearing pursuant to section 28-3514.

32 Sec. 9. Severability, implementation and construction

33 A. If a provision of this act or its application to any person or
34 circumstance is held invalid, the invalidity does not affect other provisions
35 or applications of the act that can be given effect without the invalid
36 provision or application, and to this end the provisions of this act are
37 severable.

38 B. The terms of this act regarding immigration shall be construed to
39 have the meanings given to them under federal immigration law.

40 C. This act shall be implemented in a manner consistent with federal
41 laws regulating immigration, protecting the civil rights of all persons and
42 respecting the privileges and immunities of United States citizens.

43 Sec. 10. Short title

44 This act may be cited as the "Support Our Law Enforcement and Safe
45 Neighborhoods Act".